

More specifically, Figure 1A was included as part of Howrey Docket No. 04813.0026.NPUS00 (Application Serial No. 10/058,231, filed October 19, 2001; attached hereto as Exhibit B) and Howrey Docket No. 04813.0013.NPUS00 (Application Serial No. 10/060,965; filed October 19, 2001; attached hereto as Exhibit C) both of which are incorporated in their entirety by reference in the subject application in the section entitled "RELATED APPLICATION" set forth on page 2, line 10 – page 3, line 5. MPEP § 201.06(c) allows for Applicant to rely upon an incorporation by reference of a prior application to expressly add material from the prior application. Specifically, MPEP § 201.06(c) provides that:

an applicant may incorporate by reference...prior application(s)...The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the ...application to include any subject matter in such prior applications, without the need for a petition."

In addition, Figure 1A is not essential to support the claimed subject matter. Thus, an incorporation by reference of material from the prior application, or an amendment expressly adding a figure from that prior application, is fully consonant with MPEP § 608.01(p).

Furthermore, Figure 1A illustrates a block diagram of an alternative embodiment of a metal-based fuel cell which is described on page 12, lines 4-10 of the application.

In sum, since Figure 1A is incorporated by reference in the subject application, is not essential to support the claimed subject matter, and is also described in the application, it is not new matter and the amendment should be entered.


Applicant believes that no fee is due in connection with this preliminary amendment.

However, if a fee is in fact due, the Commissioner is authorized to charge the same to our

Deposit Account No. **08-3038**, referencing Docket No. 04813.0028.NPUS00.

Respectfully submitted,

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